

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**KEVIN A. SIMNICK,**

**Petitioner,**

**V.**

**MICHAEL L. KENNEY,**

**Respondent.**

**CASE NO. 8:13CV221**

# MEMORANDUM AND ORDER

This matter is before the court on Petitioner’s Motion for Evidentiary Hearing. (Filing No. [19](#).) Rule 8(a) of the [Rules Governing Section 2254 Cases in the United States District Courts](#) states in pertinent part: “If the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.” When deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable the habeas petitioner to prove the petition’s factual allegations, which, if true, would entitle the petitioner to federal habeas relief on his claims. [Schriro v. Landrigan, 550 U.S. 465, 474 \(2007\)](#). An evidentiary hearing may be held when the habeas petition “alleges sufficient grounds for release, relevant facts are in dispute, and the state courts did not hold a full and fair evidentiary hearing.” [Sawyer v. Hofbauer, 299 F.3d 605, 610 \(6th Cir. 2002\)](#) (internal quotation omitted).

Here, the court has not yet reviewed the Petition for Writ of Habeas Corpus, Respondent's Answer, or the State Court Records. Without reviewing these materials, the court is unable to determine whether an evidentiary hearing on Petitioner's claims is necessary. Accordingly, the court will deny Petitioner's Motion without prejudice. The

court will reconsider Petitioner's Motion if, following review of the record in this matter, the court determines that an evidentiary hearing is necessary.

IT IS THEREFORE ORDERED THAT: Petitioner's Motion for Evidentiary Hearing (Filing No. [19](#)) is denied without prejudice.

DATED this 5<sup>th</sup> day of May, 2014.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge

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